

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEBRA LYON,
Plaintiff,

vs.

MICHAEL ASTRUE,
Commissioner, Social Security
Administration,
Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
EAJA FEE APPLICATION

Case No. 2:09-CV-416 TS

In this Social Security case, Plaintiff seeks attorney fees under the Equal Access to Justice Act (EAJA). "Under EAJA, a fee award is required if: (1) plaintiff is a 'prevailing party'; (2) the position of the United States was not 'substantially justified'; and (3) there are no special circumstances that make an award of fees unjust."¹ It is undisputed that Plaintiff is a prevailing party under the EAJA because she obtained a "sentence four"² remand. The Commissioner has not challenged Plaintiff's computation of her claimed

¹*Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007) (citing 28 U.S.C. § 2412(d)(1)(A)).

²Sentence four of 42 U.S.C. § 405(g).

attorney fees, their reasonableness, or that the position of the government was not substantially justified. Instead, the Commissioner has filed a Notice of No Objection to Plaintiff's petition for EAJA fees. Thus, the Commissioner has not met his burden of showing that his position was substantially justified.³

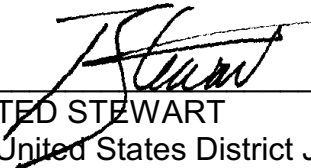
Having reviewed the standard for an award of EAJA fees in Social Security cases⁴ the record in this case, the Motion and Affidavit, and the Commissioner's Notice, the Court finds as follows: Plaintiff is the prevailing party. The Commissioner's position was not substantially justified. Plaintiff requests attorney fees for 19 hours of attorney time at \$25 an hour. The Court finds that hourly rate is reasonable. Attorney fees in the amount of \$475 are awardable under the EAJA. It is therefore

ORDERED that Plaintiff's Motion for Attorney Fees under the EAJA (Docket No. 21) is GRANTED. It is further

ORDERED that Plaintiff's counsel is awarded attorney fees in the amount of \$475.00 pursuant to 42 U.S.C. § 2412(d).

DATED April 14, 2009.

BY THE COURT:



TED STEWART
United States District Judge

³*Scarborough v. Principi*, 541 U.S. 401, 414 (2004).

⁴*E.g., Hackett*, 475 F.3d at 1172-75 (examining controlling standards for an award of EAJA fees in Social Security cases).